

**NAVAJO NATION CODE ANNOTATED**  
**TITLE 9. DOMESTIC RELATIONS**  
**CHAPTER 11. NAVAJO NATION AL CHINI BI BEEHAZ'AANII**

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **§1001. Purpose**

The Navajo Nation Al chini bi beehaz'aanii shall be liberally interpreted and construed to fulfill the following purposes:

A. To preserve and restore the harmony and unity of the family by providing for the mental and physical care and protection of the children and families which come within the jurisdiction of the Navajo Nation;

B. To protect children by taking actions and offering programs as may be proper and necessary to prevent delinquency, incorrigibility, truancy, neglect and abuse;

C. To achieve the purposes of the Navajo Nation Al chini bi beehaz'aanii in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or safety, or in the interest of public safety;

D. To mandate the participation of children and family members into appropriate culturally relevant treatment, rehabilitation and aftercare;

E. To execute and enforce the Al chini bi beehanz'annii through the Navajo Nation Courts and to ensure fundamental fairness consistent with Dine bi beenahaz'aanii, the Navajo Nation Bill of Rights and other statutory provisions for every individual who comes within the jurisdiction of the Navajo Nation Courts; and

F. To facilitate the purposes of the Navajo Nation Al chini bi beehanz'annii through coordination with non-Navajo Nations Courts and agencies; and

G. To facilitate family harmony using measures consistent with Navajo Nation statutes and Dine bi beenahaz'aanii.

### **§1002. Definitions**

The following definitions shall be limited to this Chapter:

A. "Abandonment" means the parent(s) fails to provide adequate care and/or parental supervision; and fails to maintain a parental relationship with the child without just cause for a period of three (3) months.

B. "Abandoned infant" means a child under the age of one (1) year whose parent(s) have failed to provide adequate care and/or parental supervision; and fails to maintain a parental relationship with the child without just cause. The period of abandonment may be for less than three (3) months.

C. "Abuse" means the infliction of physical, emotional, sexual or psychological injury on a child and shall include exploiting or overworking a child to such an extent that his/her health, morals, or emotional well-being is endangered.

D. "Adjudicatory Hearing" means a hearing on the factual and legal issues of the petition upon which the Court renders a decision.

E. "Adoption" means legally taking a child into one's family and raising as their own.

F. "Adult" means a person eighteen (18) years of age or older, or a person who is otherwise emancipated by Court order.

G. "Aggravated Circumstances" means any factor involved in the commission of an act of abuse or neglect that increases its enormity or adds to its injurious consequences, included, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. Aggravated circumstances shall include, but not be limited to, that the parent has:

1. committed murder of another child of the parent; or
2. committed voluntary manslaughter of another child of the parent; or
3. aided or abetted , attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or
4. committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
5. had his/her parental rights terminated involuntarily to a sibling of the subject child.

H. "Child" means a person who has not attained the age of eighteen (18) and who is unmarried or has not been emancipated.

I. "Child in Need of Supervision" (CHINS) means a child who is in need of care or rehabilitation in the following situations:

1. Being subject to compulsory school attendance, is consistently absent or tardy from school, pursuant to Title 10 NNC §118; or
2. Consistently disobeys the reasonable and lawful demands of his/her parent(s), guardian(s) or custodian(s) and is beyond control; or
3. Has committed an offense under Title 14, Civil Traffic Infractions; or
4. Has committed other non-criminal offenses under this Code.

J. "Custodian" means a person other than a parent or legal guardian in whose custody a minor child has been placed temporarily and no order granting legal custody has been given.

K. "Delinquent Act" means an act committed by a child, which would be designated as a crime pursuant to Title 17 of this Code and those traffic offenses enumerated in §1317(A) herein.

L. "Delinquent Child" means a child who is adjudicated to have committed a delinquent act.

M. "Dependent Child" means a child who is abused and/or neglected by a parent(s), guardian(s) or custodian(s).

N. "Detention" means the placement of a child alleged or determined to have committed a delinquent act that requires custody in a physically restricting facility for the protection of the child or the Navajo Nation.

O. "Detention Facility" means a place where a child alleged to have committed a delinquent act may be detained under this Chapter pending a court hearing or after adjudication.

P. "Division" means the Navajo Division of Social Services.

Q. "Domicile" means where the child's parent or legal guardian intends to permanently reside. The domicile of a child is that of the custodial parent. The domicile of a child born out of wedlock is that of the natural mother unless otherwise established in the father. Domicile for purposes of jurisdiction under this Chapter is established at the time of the alleged act(s).

R. "Emancipation" means a child over the age of sixteen (16) and under the age of eighteen (18) who has shown he/she is capable of providing for himself/herself without parental supervision and support; and a court has issued an order to that effect.

S. "Family Conference" means a meeting initiated by the Division and including the parent(s), guardian(s) or custodian(s), and family members to discuss a family resolution to alleviate the dependency issues.

T. "Family Group Conferencing" means a meeting convened by the Division at their initiation or upon referral to include parent(s), guardian(s) or custodian(s) and other family members and, if the family consents, professionals who work with the child and family, such as the teachers, psychologists, extended family, religious or traditional counselors, and friends of the family.

U. "Foster Parent" means a person, including a relative of the child, licensed by the Division or a child placement agency to provide temporary care for children in the legal custody of the Division.

V. "Guardian" means a person assigned by a court, other than a parent, having the duty and authority to provide care and control of a child.

W. "Guardian Ad Litem" means a person appointed by the Court to represent the best interests of the child.

1. This person is not the legal guardian or the legal counsel for the child and is not a legal party to the case.

2. May be a member of the Navajo Nation Bar Association.

3. May be a member of the community who has received training to be a guardian ad litem, this could include elders, community leaders or social workers.

X. "Hearing Officer" means a Navajo Nation Bar Association member with experience in proceedings under this Chapter appointed by a judge.

Y. "Law Enforcement Officer" means a duly commissioned peace officer, sheriff, or deputy sheriff.

Z. "Legal Counsel" means a person who is a member of the Navajo Nation Bar Association.

AA. "Legal Custody" refers to the legal status over a child created by court order.

BB. "Neglect" means the failure or inability of the parent, legal guardian or custodian to provide protection, food, clothing, shelter, medical care, education or supervision for the child's health, safety and well being.

CC. "Parent" includes a biological or adoptive parent, or where legal paternity has been established and whose parental rights have not been terminated.

DD. "Paternity" for purposes of establishing paternity, a man is presumed to be the father of a child, unless he or the mother proves otherwise to a Court. If he:

1. Was married to the mother when the child was conceived or born. He attempted to marry the mother (even if the marriage was not valid) and the child was conceived or born during the "marriage," or

2. Married the mother after the birth and agreed either to have his name on the birth certificate or to support the child, or

3. Welcomed the child into his home and openly held the child out as his own.

EE. "Permanency Options" means options for the placement of a child in a stable long term family environment that is in the best interest of the child. In order of preference, the Navajo Nation shall:

1. Reunify the child with the parent(s), guardian(s) or custodian(s);

2. Create a permanent guardianship with a qualified relative;

3. Adoption with a person(s) enrolled or eligible for enrollment with the Navajo Nation;

4. Adoption by a qualified Native American;

5. Adoption by a non-Native American.

FF. "Protective Custody" means removal of a child by the Division or Law Enforcement from the home upon a non-judicial determination that the child is not safe within the home.

GG. "Protective Services" means a program in which a Division social worker intervenes and takes necessary action, including removal of the child from the home, to protect and stabilize a family in the best interest and welfare of the child.

HH. "Protective Supervision" refers to the legal status created by the Court, by which the Division is given authority to monitor the safety and welfare of the child, no matter where he/she is placed for the duration of the proceedings before the Court.

II. "Regional Children's Review Board" means a five member board representative of the various community resources (i.e. medical personnel, legal advocates, educators, foster parents, etc.), at least one of whom is not responsible for case management of or delivery of services to either the child or the parents who are the subject of a permanency review in dependency proceedings.

JJ. "Shelter Care" means a temporary placement of a child approved by the Division pending final disposition of the Court.

### **§1003. Courts; Generally**

A. The Navajo Nation Courts shall have original exclusive jurisdiction over all matters arising under this Chapter.

B. The procedures under this Chapter shall be governed by this Code, the Navajo Nation Children's Code Rules of Procedure and the Navajo Rules of Civil Procedures, if applicable.

C. The Court is authorized to cooperate fully with any federal, state, Navajo Nation, public or private agency to participate in any diversion, rehabilitation, training, peacemaking programs and to receive grants in aid to carry out the purposes of this Chapter.

D. The Court, in the exercise of its duties may utilize such resources as may be available through the Navajo Nation, federal, or state governments.

E. The Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Nation that, absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Nation Courts.

### **§1004. Jurisdiction**

A. The Court shall have exclusive original jurisdiction over all proceedings in which a child is alleged to be a child in need of supervision, a dependent child, or a delinquent child.

B. The Court shall have exclusive original jurisdiction of the following proceedings for:

1. The termination of parental rights;
2. The adoption of a child;



3. Determining physical and/or legal custody of, or to appoint a custodian or guardian for a child;

4. The commitment of a mentally ill or mentally disabled child;

5. The authorization of the marriage of a minor;

6. The emancipation of a child.

#### C. Territorial jurisdiction

1. The Court may hear all matters under this Chapter involving all children, including non-Navajo, residing within Navajo Indian Country.

2. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority.

D. Jurisdiction obtained by a Court over a child is retained until terminated by any of the following situations:

1. The child becomes eighteen (18) except when the court finds that it is in the best interests of the child to exercise jurisdiction until the age of twenty-one (21).

2. The case is transferred to adult Court pursuant to §1312 of this Chapter.

3. When the Court enters an order terminating jurisdiction.

### **§1005. Venue**

A. Venue for proceedings under this Chapter shall be determined by the residence or domicile of the child or the judicial district where the alleged act occurred. Venue exists concurrently in the Window Rock District for Navajo children who reside outside Navajo Indian Country.

B. Where the residence of the child and the location of the alleged act are in different districts, initiating proceedings in one district shall bar subsequent filing of proceedings in other districts.

### **§1006. Division of Social Services; Responsibilities and Duties**

A. The Division shall provide the following protective services:

1. Receive from any source oral or written information regarding alleged abused or neglected children and when appropriate arrange for temporary out of home placement for such children on a twenty-four (24) hour basis.

2. Upon receipt of an initial report or information alleging abused or neglected children immediately:

a. Notify and coordinate with Law Enforcement throughout the investigation;

b. Conduct a thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

3. Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his/her surroundings and that his/her removal is necessary.

4. The Division shall cooperate with the Law Enforcement to remove a child from the custody of his/her parent(s), guardian(s), or custodian(s) when necessary.

5. During the investigation evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. The Division shall determine whether any of such children is a child in need of protective services.

6. Make reasonable efforts, when required, to prevent the need for removal of the child from the family, and offer appropriate services to the family of any child determined to be a child in need of protective services.

7. If the Division in its assessment finds that Court intervention is warranted, it shall refer the matter to the Office of the Prosecutor.

B. The Division may cooperate with such state and community agencies as are necessary to achieve the purposes of this Chapter. The Division may negotiate working agreements with other jurisdictions, subject to ratification by the Navajo Nation Council.

#### **§1007. Law Enforcement; Responsibilities and Duties**

A. The Department of Law Enforcement shall investigate dependency, child in need of supervision and delinquency reported or referred to it by any individual or agency regarding all matters under this Chapter.

B. Law Enforcement shall be available twenty-four (24) hours a day seven (7) days a week to respond to and investigate reports of alleged dependency, child in need of supervision and delinquency. Law Enforcement shall immediately consult with the Division regarding the report if an emergency placement is necessary.

C. Law Enforcement shall conduct investigations of all reports of dependency, child in need of supervision and delinquency pursuant to established protocols, including identified timelines.

D. Upon the report of alleged abuse and/or neglect Law Enforcement shall immediately notify and coordinate with the Division throughout the investigation.

E. When conflicts of jurisdictional issues occur, the Law Enforcement officer will notify the local agency jurisdiction by telephone and follow-up with a copy of the report.

F. Determination of priority for action shall be a joint decision of the responsible agencies and/or investigators through the exercise of their professional judgment.

1. Response is determined by the apparent potential risk of harm to the child. Priority assessments will be determined on a case-by-case basis.

2. The Law Enforcement officer can request the assistance of the Division.
3. Law Enforcement shall assist as appropriate and as availability allows in situations in where the child(ren) is in no immediate danger or where child safety is assured.

### **§1008. Procedural Matters**

A. The Court may allow, on its own motion or the motion of the Prosecutor or counsel for the child, amendment of a petition or motion to add additional issues, findings or remedies raised during the proceeding.

B. The Court may issue subpoenas requiring attendance and testimony of witness(es) and the production of records, documents or other relevant items.

C. The Court may cite a person for contempt of court for disobeying the Court's order or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders.

D. In any proceeding under this Chapter, either on motion of a party or on the Court's own motion, the Court may make an order restraining the conduct of any party over whom the Court has obtained jurisdiction.

### **§1009. Detention facilities – Standards – Reports**

The Division of Health or other designated agency shall promulgate rules concerning health and safety issues for all detention facilities.

### **§1010. Summons; Service**

Service of process shall conform to Rule 4 of the Navajo Rules of Civil Procedure, including the following:

A. After a petition is filed, the Court shall set a time for a hearing and direct the issuance of a summons by the Court clerk;

B. A summons shall be issued to the child's parent(s), guardian(s), or custodian(s) and to such other person(s) as the Court considers proper or necessary parties.

C. A summons shall be issued to a child alleged to be a child in need of supervision or a delinquent child.

### **§1011. Appeals**

A. Any party may appeal from a final judgment of the trial court to the Supreme Court of the Navajo Nation.

B. In cases where custody, placement and detention of a child is at issue, the Navajo Supreme Court will immediately review the files, records and transcripts from the trial Court and

may render a decision without a hearing. Proceedings under this Chapter shall be expedited in furtherance of the best interests of the child.

C. Except for appeals identified under (B) of this section, all appeals shall be conducted pursuant to the Navajo Rules of Appellate Procedure.

### **§1012. Social and Legal Records – Inspection**

A. Social, medical, psychiatric and psychological records of the Court concerning a child and produced or recorded by requirement or authority contained in this Chapter, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:

1. The judge, the Division, probation officers and Court personnel;
2. Representatives of any agency providing supervision and/or having legal custody of the child;
3. Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.
4. Any release of the above information shall be consistent with the Navajo Nation Privacy and Access to Information Act.

B. All or any part of records or information secured from records listed in section (A), when presented to the Court in a proceeding under this Chapter, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.

C. Any unlawful disclosure of the information identified in section (A) herein shall be subject to the criminal and civil sanctions of the Navajo Nation Privacy and Access to Information Act.

### **§1013. Sealing and Destroying of Records**

A. On motion by or on behalf of a child who has been the subject of a petition filed under this Chapter or on the Court's own motion, the Court may vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, probation services and of any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the Court finds that:

1. Two (2) years have lapsed since the final release of the child from legal custody and supervision, or two (2) years have lapsed since the entry of any other judgment not involving legal custody or supervision.
2. The child has not, within the two (2) years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a Court, and no proceeding is pending seeking such a conviction or finding.

B. Notice of the motion shall be provided to parties and other individuals having an interest in the proceedings and pursuant to the Navajo Rules of Civil Procedure.

C. Upon entry of the sealing order the record shall be permanently closed and may only be unsealed pursuant to an order of the Court thereafter by one of the following:

1. By motion of the child who is the subject of the records and only to those persons named in the motion;

2. In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment or to persons engaged in fact-finding or research in work related to the child's welfare.

D. Any finding or allegations of delinquency or need of supervision subsequent to the sealing order may by Court order be used as a basis to set aside the sealing order.

E. A person who has been the subject of a petition filed under this Chapter shall be notified of the right to have records sealed by the Court at the end of the dispositional stage.

F. In delinquency proceedings all records shall be destroyed when the child reaches the age of twenty-one (21) or by Court order.

#### **§1014. Court Costs and Expenses**

A. Subject to the availability of funds, the following expenses shall be a charge upon the funds of the Court upon their certification by the Court:

1. The expenses of service of summons, notices, subpoenas, and other like expenses incurred in any proceeding under this Chapter;

2. Reasonable compensation of a guardian ad litem appointed by the Court.

3. If, after due notice to the parent(s) or other person(s) legally obligated to care for and support the child, and after a hearing, the Court finds that such person(s) is financially able to pay all or part of the costs and expenses in (1) or (2) of this section, the Court shall order them to pay the costs and expenses and may prescribe the manner of payment.

B. Whenever custody of a dependent child or a child in need of supervision is vested in someone other than the child's parent(s), the Court, after notice to the parent(s) or other person(s) legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parent(s) or other legally obligated person(s) to pay to the Court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.

C. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment may be filed, and, if filed, shall have the effect of a civil judgment.

## **SUBCHAPTER 2. DEPENDENCY PROCEEDINGS**

### **§1101. Children not taken into physical custody; Family Group Conferencing**

A. The goal of family group conferencing is to ensure families re-assume primary responsibility, *t'áá hwó ájít'eego*, with guidance from the Division, in regard to children's safety and well-being to eliminate the need for Court intervention.

B. The Division is required to refer every reported and substantiated case of child abuse and neglect to a family group conference when the abuse or neglect does not require removal.

C. The Division may refer cases involving family disputes or neglect where the child has not been removed to family group conferencing through the Peacemaking Program.

D. Concerned family members and professionals may refer any matter concerning a child to family group conferencing either through the Division or Peacemaking Program. Such a referral shall not preclude removal if reasonable grounds exist to believe that the child is abused and/or neglected and removal is necessary.

E. A Court may refer a matter to family group conferencing through the Division or Peacemaking Program at any time after a petition is filed.

### **§1102. Taking into physical custody**

A. A child may be taken into physical custody by the Division or Law Enforcement officer if reasonable grounds exist to believe that the child is abused and/or neglected and removal is necessary. The Division or Law Enforcement officers shall have authorization to address the immediate needs and emergency medical attention of the child during the initial hold period prior to the filing of a petition.

B. Any Law Enforcement officer or the Division having a child in temporary physical custody for reasons other than the commission of a delinquent act may place the child pursuant to §1108 herein.

C. If a child is taken into temporary physical custody the Division shall obtain a medical clearance of the child within twenty-four (24) hours.

D. If a child is taken into custody and is not released to the child's parent(s), guardian(s) or custodian(s), the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two (72) hours, excluding Saturdays, Sundays and Court holidays, to the child's parent(s), guardian(s) or custodian(s), and to the Prosecutor together with a statement providing the reason for taking the child into custody. If no parent(s), guardian(s) or custodian(s) can be found the Division may give notice at the last known physical address or to an immediate relative of the parent(s), guardian(s) or custodian(s).

E. The Division shall have the authority to maintain physical custody of the child without a Court order not to exceed ninety-six (96) hours from the time the child is initially taken into physical custody, excluding Saturdays, Sundays and Court holidays.

### **§1103. Release or delivery from physical custody**

A. The Law Enforcement officer taking an allegedly abused and/or neglected child into physical custody shall, with all reasonable speed but not to exceed twenty-four (24) hours:

1. Release the child to the child's parent(s), guardian(s) or custodian(s) when there is no immediate danger to the child and issue verbal counsel to ensure the child's safety; or
2. Deliver the child to the Division; or
3. Deliver the child to an appropriate shelter care facility; or
4. Deliver the child to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis; and
5. Notify the Division in any of the above situations.

B. The Division or Law Enforcement officer taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two (72) hours, to the child's parent(s), guardian(s) or custodian(s) and to the Prosecutor together with a statement providing the reason(s) for taking the child into custody.

C. The Division shall review the need for continued custody within a reasonable time after delivery of the child to the facility and shall release the child from custody if appropriate. The Division shall determine whether the child can be released from custody with the provision of appropriate services to the family, or under specified restrictions.

### **§1104. Preliminary assessment; Family Conference; Referral**

A. The Division shall conduct a family conference within forty-eight (48) hours, excluding Saturdays, Sundays and Court holidays, of the child being taken into custody. The Division will give notice of the conference to the parent(s), guardian(s) or custodian(s) of the child by all reasonable means but, if the parent(s), guardian(s) or custodian(s) cannot be notified or located or refuse to participate in the conference, the conference shall still go forward. Upon completion the matter may be referred:

1. To services within the Division to work with the family to alleviate the issues identified including written referral for the family to other appropriate agencies, and the child will be returned, or
2. The Prosecutor's Office to assess whether to file a dependency proceeding.

B. Upon commencement of the family conference, the parent(s), guardian(s) and/or custodian(s) of the child shall be informed of available legal services in writing and that they have the right to be represented by counsel and no person may be compelled to appear at any conference, to produce any papers, or to visit any place.

C. For those cases that may require Court intervention, Law Enforcement and/or the Division shall promptly make a verbal report to the Prosecutor by telephone or in person for preliminary inquiry, and followed up by a written report if deemed necessary.

D. The written report shall contain the names and addresses of the child and his/her parent(s), guardian(s) or custodian(s), the child's age, the nature and extent of the child's abuse and/or neglect, including any evidence of previous abuse and/or neglect and other information that might be helpful in establishing the cause of abuse and/or neglect and the identity of the person or persons responsible for the abuse and/or neglect, and where the child has been referred or can be found.

### **§1105. Petition – Form and Content**

A petition initiating any proceeding under this subchapter shall be captioned "In the Court of the Navajo Nation, \_\_\_\_\_ (judicial district)", and entitled, "In the Matter of \_\_\_\_\_ a child, census number: \_\_\_\_\_ DOB: \_\_\_\_\_ and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. If the child is alleged to be a dependent child, a citation to the appropriate section of the Chapter shall be included.

C. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.

D. The name, birth date, residence and address and clan (if known) of the child.

E. The name(s) and residence addresses of parent(s), guardian(s), and custodian(s) of the child; and if none of the parent(s), guardian(s) or custodian(s) reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

F. The name of the Prosecutor presenting the petition.

G. Whether the child is in custody, and, if so, where the child is placed and the time and date the child was taken into custody.

H. The efforts made by the Division or other agencies, persons or entities to prevent the removal of the child from the parent(s), guardian(s) or custodian(s) through the provision of specific identified services, if appropriate, including whether family group conferencing was conducted.

I. If any matters required to be set forth by this section are not known, a statement that they are not known should be made.



### **§1106. Filing of Petition**

A. A petition shall be filed by the Prosecutor within twenty-four (24) hours from the time the Division refers the matter to the Prosecutor, excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released to the parent(s), guardian(s) or custodian(s).

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, upon information and belief, may cause a petition to be initiated by the Prosecutor alleging one or more of the following, the child:

1. Has been abandoned by his/her parent(s), guardian(s) or custodian(s); or
2. Is without proper parental care and control, or whose subsistence, education or medical care necessary for the child's well-being is inadequate because of the faults or habits of the parent(s), guardian(s) or custodian(s); or their neglect or refusal, when able to do so, to provide to the child; or
3. Has parent(s), guardian(s) or custodian(s) unable to discharge his/her responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or
4. Has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act, or other federal law; or
5. Has been physically, emotionally, psychologically or sexually abused by his/her parent(s), guardian(s) or custodian(s), or another person due to inadequate parental control; or
6. Has been sexually exploited by his or her parent(s), guardian(s) or custodian(s), or another person due to inadequate parental control; or
7. Has parent(s), guardian(s) or custodian(s) who knowingly, intentionally or negligently:
  - a. Placed the child in a situation that may endanger his/her life or health; or
  - b. Tortured, cruelly confined or cruelly punished him or her.

### **§1107. Informal Adjustment**

A. At any time after a petition is filed, but before the adjudicatory hearing the Prosecutor and respondent(s), with concurrence of the Division, may file a motion to suspend the proceedings.

B. Informal adjustment shall only be utilized when it promotes the best interests of the child and protects the child's health and safety.

C. Respondent(s) shall comply with any recommended informal adjustment plan developed by all parties involved and supervised by the Division, which shall not exceed six (6) months from the date all parties have signed and agreed to the plan, unless the plan is completed earlier or parties agree to extend; such extension shall not exceed ninety (90) days.

D. Upon completion of the plan the petition will be dismissed by motion of the Prosecutor.

E. Should the respondent(s) not comply with the plan, the dependency action may be reinstated by motion of the Prosecutor.

### **§1108. Shelter Care; Motion and Hearing**

A. After or concurrent with the filing of the petition, the Prosecutor may file a motion for an order of temporary legal and/or physical custody.

B. A hearing on the motion shall be held within twenty-four (24) hours from the time the motion is filed, excluding Saturdays, Sundays and Court holidays. If parent(s), guardian(s) or custodian(s) cannot be found for timely notification of the hearing, the Court may in its discretion continue the hearing for a period not to exceed forty-five (45) days.

C. A child shall not remain in custody unless one of the following criteria is met at the shelter care hearing. Probable cause exists to believe that:

1. If not in custody, the child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. The child has no parent(s), guardian(s) or custodian(s) able to provide adequate supervision and care for the child; or

3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers; or

4. The health and safety of the child cannot be assured if the child is not kept in custody.

D. Any order issued pursuant to this section, which removes (even temporarily) the child from his/her home shall contain the findings: "that reasonable efforts to prevent removal from the family were made or that it is reasonable to make no efforts to reunite the family, and that out of home placement would be in the best interest of the child or that remaining in the current residence is contrary to the welfare of the child."

E. Written notice of the custody hearing stating the time, place and purpose of the hearing shall be given by the person designated by the Court to the child's parent(s), guardian(s) or custodian(s), at their last known physical address, or if the parent(s), guardian(s) or custodian(s) cannot be found, to an immediate relative.

F. A hearing officer may be appointed by the Court to recommend findings to the judge regarding the need for further custody of the child.

G. At the commencement of the custody hearing, the judge or hearing officer shall advise the parties of their basic rights, including their right to be represented and appointed legal counsel.

H. The Court, at its discretion, may appoint a guardian ad litem. The duties of the guardian ad litem shall be to:

1. Guide the Court to serve the best interests of the child;
2. Inform by written report to the Court on matters regarding the background, environment, needs and wishes of the child;
3. Appear at all proceedings and to speak on behalf of the child; and
4. Remain active until discharged by Court order or when the case is closed with the Court.

I. If the judge or hearing officer finds out of home placement is appropriate under criteria established by this section, the judge shall issue an order placing the child in an appropriate location.

J. If the Court finds out of home placement is not appropriate under the criteria established by this section, the judge shall order release of the child, but may order protective supervision until further order of the Court.

K. If the Court determines that the child requires assessments the Division will make the necessary arrangements.

L. All relevant and material evidence helpful in determining the need for continued custody may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

M. If a parent(s), guardian(s), or custodian(s) was properly notified and failed to appear or waive appearance at the custody hearing, the Court shall proceed with the hearing.

### **§1109. Shelter Care Placement**

A. Placement shall not be in a jail or other facility intended or used for the incarceration of adults or for detention of delinquent children.

B. A child may be placed in the temporary custody of:

1. A relative or other household member who is willing to guarantee that:
  - a. The child will not be returned to the alleged abusive or neglectful parent(s), guardian(s) or custodian(s), and will not be allowed to have unsupervised visitation with the parent(s), guardian(s) or custodian(s) without the prior approval of the Court, and
  - b. There is no convicted or registered sex offender, or person convicted of crimes of abuse against children in the household.
  - c. Appropriate services, as identified by the Division, will be completed for the best interest of the child.

2. A licensed foster home or a home otherwise authorized under the law to provide foster care or group home.
3. A facility operated by a licensed child welfare services agency.
4. Any other suitable placement determined by the Court.

#### **§1110. Preliminary Hearing**

Within thirty (30) days after the shelter care hearing, the Court shall schedule a preliminary hearing to address the following:

- A. Review the status of service of process;
- B. Inform parent(s), guardian(s) or custodian(s) of their continuing legal rights to representation for the duration of the proceedings;
- C. Advise parent(s), guardian(s) or custodian(s) of the petition filed and contents therein;
- D. Review the response to the petition. If the time to respond to the petition is waived, the Court may proceed pursuant to §1111 or §1113, herein;
- E. Narrow the issues including a statement from the parties regarding stipulations or disputes;
- F. Consider alternative processes, i.e. informal adjustments, dismissal, or peacemaking;
- G. If no settlement, schedule an adjudicatory hearing.

#### **§1111. Adjudicatory Hearing**

- A. A hearing, shall be conducted by the Court separate from other proceedings. All hearings will be without a jury.
- B. Hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the Court may be present at a closed hearing. In addition, persons the Court finds to have a proper interest in the case or in the work of the Court, including members of the Navajo Nation Bar Association, may be admitted by the Court to closed hearings on the condition that they respect the confidentiality of the proceedings.
- C. Those persons or parties who intentionally divulge information in violation of (B) of this section may be found liable for a civil offense. Persons found in violation of this section by a preponderance of the evidence may be ordered to pay a civil fine not to exceed five hundred dollars (\$500.00), and may be subject to other action by the Court necessary to protect the confidentiality of the proceedings and the best interest of the child.
- D. The Court shall make the following findings:

1. If the allegations as identified in the petition pursuant to §1106(B) are denied, the Court shall proceed to hear all of the evidence and enter into the record whether or not the child is dependent based on clear and convincing evidence.

2. If admitted, the Court shall make findings of the validity of the admission.

3. If the Court finds that the allegations have not been established, it shall dismiss the petition and order the child be returned to the parent(s), guardian(s) or custodian(s).

4. If child is found to be dependent pursuant to §1106(B), the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

### **§1112. Predisposition studies, reports and examinations**

A. Prior to holding a dispositional hearing, the Court shall direct a predisposition study and written report from the Division.

B. The predisposition study required under section (A) shall contain the following information:

1. A statement of the specific harm to the child that intervention is designed to alleviate;

2. If removal from or continued placement outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his/her parent(s), guardian(s) or custodian(s);

3. A case plan consisting of:

a. A description of the specific progress needed to be made by both the parent(s) and the child in order to prevent further harm to the child and to reunify the family, a specific plan setting out the steps to be taken by the parent(s) and the Division social worker and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the Division's overall plan for insuring that the services will be delivered;

b. Recommended services based on appropriate assessments, including any culturally relevant assessments, that will, if completed, remedy the conditions that led to removal of the child;

c. Pertinent treatment efforts facilitated by the family, including culturally relevant services and assessments;

d. Case history, including previous Division and/or Court ordered intervention;

e. Justification for continued out of home placement;

f. A description of the steps that will be taken to minimize any harm to the child that may result if separation from his/her parent(s) occurs or continues;

g. Permanency placement options, including adoption, guardianship, long-term care, in the event reunification is not in the child and/or the family's best interest.

C. A copy of the predisposition report shall be provided by the Division to the Court and to all parties or their counsel, if any, at least but not less than five (5) days, excluding Saturdays, Sundays and Court holidays before the dispositional hearing.

### **§1113. Disposition Hearing**

A. The Court may in its judgment make any of the following dispositions in the best interests of the child and shall consider:

1. Recommendations of the Division.
2. Formal evaluations and assessments for the parent(s) and the child, if necessary.
3. Other recommendations from the parties.
4. Order of Placement
  - a. Permit the child to remain with his/her parent(s), guardian(s) or custodian(s) subject to conditions and limitations prescribed by the Court;
  - b. Place the child under protective supervision of the Division;
  - c. Transfer and maintain legal custody of the child to the Division for appropriate placement.
5. Any other disposition as may be necessary to serve the best interests of the child.

B. This hearing, if not held in conjunction with the adjudicatory hearing shall commence within thirty (30) days after conclusion of the adjudicatory hearing.

C. If the Court orders continued out of home placement, the Court shall make a finding that return of the child would be contrary to the welfare of the child and that reasonable efforts have been made to prevent continued removal of the child. In addition, the Court's order shall provide that the parent(s), guardian(s), custodian(s) or other family members shall have reasonable rights of visitation unless the Court finds that the best interests of the child preclude any such visitation.

D. The Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence even though not otherwise admissible.

E. By motion of a party or by its own authority, the Court may continue the hearing for a period not to exceed ten (10) working days to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. During any continuance under this Section, the Court shall issue an appropriate order for temporary legal custody.

F. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The Court shall make a determination within sixty (60) days of the child being removed that reasonable efforts to reunite the family have been offered to the family. Such efforts may include the Court making a determination that reunification should be facilitated by referring the family to the Peacemaking Program.

G. The Court may determine that reasonable efforts are not required to be made when the Court finds the efforts would be futile; or the parent(s), guardian(s) or custodian(s) has subjected the child to aggravated circumstances. In which case, a permanency review hearing, pursuant to §1115 herein, shall be held within thirty (30) days of such a determination.

#### **§1114. Regional Children's Review Board**

A. The Courts may authorize a Regional Children's Review Board to review cases determined by the Court to be long-term out-of-home placements.

B. The Division Central Administration shall create policies and procedures detailing the functions of the Regional Children's Review Board. These policies and procedures shall include the necessary criteria and continued membership on a Regional Children's Review Board.

C. The Court may contact the Division Central Administration for case assignment to an appropriate Regional Children's Review Board.

D. Regional Children's Review Boards shall:

1. Review, within six (6) months of placement and at least once every six (6) months thereafter, the case of each child who remains in out-of-home placement and who is the subject of a dependency action to determine what efforts have been made by the Division to carry out the case plan for the permanent placement of such child.

2. Allow a child's parent(s), guardian(s) and custodian(s) to attend the case review. The parent(s), guardian(s) and custodian(s) may be represented at the case review by legal counsel.

a. A party may object to what is presented at a case review and he/she must object at the time of the presentation to the Regional Children's Review Board. The case review shall continue over the objection.

b. The party objecting shall then request a hearing from the Court and present to the Court the reasons for the objection.

c. The Regional Children's Review Board shall submit findings and recommendations to the Court with the understanding that the Court will only consider these findings and recommendations after the requested hearing.

3. Review any case assigned by the Court for early review of the case plan within sixty (60) days after the removal of a child from that child's home.

4. Submit to the Court within ten (10) days following the review its findings and recommendations regarding the efforts and progress made by the Division to carry out the case plan, together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include the date of the next review. A copy of such findings and recommendations shall be sent to the Division. The Court shall review the findings and recommendations within ten (10) days of issuance and issue an order adopting the findings and recommendations.

5. Encourage and facilitate the timely return of children to his/her parent(s), guardian(s) or custodian(s).

6. Encourage the Division to exert all possible efforts to make arrangements for permanent plans for children for whom return to the parent(s), guardian(s), custodian(s) or adoption is determined to be infeasible or impossible.

7. Promote and encourage the Division to maximize stability and family continuity for children in foster care by discouraging unnecessary changes in the placement of foster children.

### **§1115. Review Hearings; Permanency**

A. The first review hearing shall be conducted by the Court and held within six (6) months from the date of removal or the date of the judicial finding of abuse and/or neglect, whichever is earlier and every six (6) months thereafter.

B. The permanency review hearing shall be held every six (6) months after the first review hearing of a child's dispositional order or within twelve (12) months of a child entering foster care. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

1. The date of the adjudicatory order finding that the child has been abused or neglected;  
or

2. Sixty (60) days after the date on which the child was removed from the home.

C. The permanency review hearing shall be held every six (6) months when a child is in the legal custody of the Division.

D. The first review and permanency hearing shall be conducted by the Court. Subsequent review and permanency hearings may be referred to a Regional Children's Review Board for a review as established by the Division policies and procedures, as well as, §1114(D), herein, when the Court has determined that the placement is long-term out-of-home.

E. These hearings shall review any progress made regarding any treatment plan ordered at the disposition hearing and include the following:

1. Determine the safety of the child, the continuing need for and appropriateness of the placement;

2. Determine the extent of compliance with the case plan;

3. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and

4. Project a likely date by which the child may be returned and safely maintained at home and consider permanency options in the event return of the child does not occur. Permanency options shall include possible placement for adoption, permanent guardianship, or the possible filing of termination of parental rights.

5. Determine whether the family will be referred to a Peacemaker with specialized training in child dependency issues to facilitate a permanency placement.

6. If the Division plan does not include either reunification, adoption, guardianship or placement with a fit and willing relative, the Court shall determine whether compelling reasons exist to find that these placements are not in the best interest of the child.

F. If the Division determines that the most appropriate plan is placement in another planned permanent living arrangement and not one identified in subsection (E)(6), herein, the



Court shall by compelling evidence demonstrate that this is in the best interest of the child and the most appropriate plan.

#### **§1116. Voluntary Placement**

A. A parent can have his/her child placed voluntarily out of home by making such a request to the Division.

B. Such placement shall be by written agreement between the Division, the parent(s) and any proposed temporary placement. The agreement shall be filed with the Court by the Prosecutor for docketing and recognition.

C. The voluntary placement agreement shall specify at a minimum the legal status of the child and the rights and obligations of the parent(s) or guardian(s), the child and the Division while the child is in placement. Such status and obligations are as follows:

1. The child is in the temporary custody of the Division and the parent(s) has authorized the Division to obtain any needed emergency medical care or make decisions on other basic needs for the child, and temporary placement with a party proposed by the parent(s) or determined by the Division.

2. The parent is agreeing to have the Division take this temporary custody and provide placement while the parent(s) is addressing any outstanding issues, which could affect the safety and wellbeing of the child.

3. A statement that the parent(s) can revoke the voluntary agreement and have his/her child returned to him/her any time before Court intervention.

D. The agreement shall be in effect for up to one hundred fifty (150) days. A hearing shall be held on the status of the voluntary out of home placement by the one hundred fiftieth (150<sup>th</sup>) day. The Prosecutor can vacate the hearing if the child returns to the parent(s).

1. A judicial determination shall be made that the continued out of home placement is in the child's best interest and that reasonable efforts to prevent removal were made or are not required by the one hundred seventy-ninth (179<sup>th</sup>) day the child is voluntarily placed out of home.

2. Upon this initial determination the case shall be referred to the Office of the Prosecutor to proceed as a dependency pursuant to §1106, herein.

#### **§1117. Duty to report child abuse; penalty for failure to report**

A. Any medical provider, school personnel, law enforcement official, or social worker, acting in his or her official capacity, or any appointed or elected Naat'aanii, having a reason to believe that any abuse or neglect has been inflicted upon a child shall report the matter immediately to a Law Enforcement official or the Division.

B. Any other person having reason to believe that a child has been subjected to serious injury or injuries have been inflicted upon the child as a result of abuse or neglect shall report the matter immediately to a Law Enforcement official or the Division.

C. A lay person who provides a report of abuse or neglect may at his/her discretion remain anonymous.

D. Any person failing, neglecting or refusing to report a suspected case of child abuse or neglect pursuant to this section may be subject to civil sanction including but not limited to a penalty not to exceed five-hundred dollars (\$500.00).

#### **§1118. Waiver of Privilege and Immunity**

A. In any proceeding alleging child abuse or neglect under this Chapter resulting from a report submitted under §1116, or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege, rule or law against disclosure.

B. Any person reporting an instance of suspected child abuse or neglect, or participating in a judicial proceeding brought as a result of a report submitted under §1116 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability, unless a finding is made that the person acted in bad faith or with malicious purpose.

C. The Division shall be immune from civil or criminal liability for services rendered pursuant to this Chapter, unless the Division acted with gross negligence or malice or unless the Division has been charged with or is suspected of abusing, abandoning or neglecting the child in question.

#### **§1119. Interlocutory disposition order in cases where service is made by publication; effect**

A. When a parent cannot be served pursuant to the Navajo Rules of Civil Procedure, the Court shall issue an order of publication to comply with those rules. After service by publication has been completed and the parent(s), guardian(s) or custodian(s) still fails to appear, the Court shall conduct a provisional hearing, which shall enter an interlocutory order of the following:

1. Make findings on the allegations of the petition declaring the child dependent;
2. Determine legal custody and placement of the child;
3. Determine appropriate services for the child;
4. Continuing efforts by the Navajo Nation to notify the parent(s), guardian(s) or custodian(s) of the proceedings.

B. The interlocutory order shall remain in effect for no longer than six (6) months and if the parent(s), guardian(s) or custodian(s) still fails to appear within that period, the interlocutory order shall become a final judgment and proceed pursuant to §1113 herein.

C. The Court shall conduct the proceedings pursuant to §§ 1111 and 1113 [adjudication and disposition] upon the parent(s), guardian(s) or custodian(s) presence at the final hearing or pursuant to a voluntary waiver of notice and appearance at any time during the proceedings.

### **SUBCHAPTER 3. CHILD IN NEED OF SUPERVISION PROCEEDINGS**

#### **§1201. Commencement of proceedings; Preliminary Inquiry and Referral**

A. Proceedings shall be initiated by the filing of a petition signed by the Prosecutor.

B. Any governmental employee, including social workers and school personnel; or parent(s), guardian(s) or custodian(s), who has knowledge of the facts alleged or is informed of them and believes that they are true; or a Law Enforcement official upon information and belief, may cause a petition to be initiated by the Prosecutor.

C. The Prosecutor shall, based on the information provided, determine whether a petition should be filed or whether the matter should be referred to other appropriate forums/agencies including peacemaking and diversion programs to address the needs of the minor child and to determine what is in the child's best interest including family involvement.

##### 1. Referral to Peacemaker Program:

a. The Prosecutor may refer cases involving family disputes or neglect where the child has not been removed to family group conferencing through the Peacemaking Program.

b. A Court may refer a matter to family group conferencing through the Division of Peacemaking Program at any time after a petition is filed.

D. Where there is an indication that the child may be mentally ill or mentally disabled, the Court, the Prosecutor, other counsel or party may motion for an order to have the child examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition.

#### **§1202. Petition -- Form and Content**

A petition initiating any proceeding under this subchapter shall be captioned "In the Court of the Judicial District of \_\_\_\_\_ (judicial district)", and entitled, "In the Matter of \_\_\_\_\_ a child, census number: \_\_\_\_\_ DOB: \_\_\_\_\_, and concerning \_\_\_\_\_, parents"; and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. A statement that the child is in need of supervision, care or rehabilitation.

C. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred, including the appropriate citations to the Code.

D. The name, birth date, residence and address of the child.

E. The names and residence addresses of parent(s), guardian(s), and custodian(s); and if none of the parent(s), guardian(s), or custodian(s), reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

F. The name of the Prosecutor presenting the petition and the date and time presented.

G. A statement of the date referred to the Prosecutor and that the petition was filed within thirty (30) days of that date.

H. Whether the child is in protective custody, and, if so, the place and the time he/she was taken into custody.

I. List of Prosecutor's proposed witnesses.

J. If any matters required to be set forth by this section, not including the allegations, are not known, a statement that they are not known should be made.

### **§1203. Filing and Dismissal of Petition**

A. The Prosecutor shall file all pleadings with the clerk of the Court.

B. A petition shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten (10) calendar days from the date the petition is filed when a child is taken into protective custody (i.e. group home or foster care).

2. Twenty (20) calendar days from the date the petition is filed when a child is not taken into protective custody or is released.

3. The hearing may be continued, which shall not exceed ten (10) calendar days, if a child is taken into protective custody, or twenty (20) calendar days, if child is not taken into protective custody upon motion by:

a. The Prosecutor by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the name(s) and address(es) of the unavailable witness(es) and will be granted only upon a showing by the Prosecutor that they have exercised due diligence in attempts to secure the evidence and/or attendance of witness(es). Proof of due diligence of attempted service can be shown by affidavit submitted by the Prosecutor or the Department of Law Enforcement. If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

b. The Court for lack of service.

c. Any party to allow time for appointment of counsel.

C. A petition shall be dismissed if filed more than thirty (30) days from the date of the information provided to the Prosecutor.

#### **§1204. Basic Rights**

A. The child shall be, from the time of the filing of the petition or, in an emergency, when taken into protective custody, advised of the privilege against self incrimination, including the child's right to have his/her parent(s), guardian(s), or custodian(s) present. If taken into protective custody, the child shall not be questioned except to determine identity and to determine the name of the child's parent(s), guardian(s), or custodian(s).

B. In a proceeding on a petition alleging a child in need of supervision:

1. An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.

2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.

3. An extra-judicial admission or confession made by the child out of Court is insufficient to support a finding that the child committed the act(s) alleged in the petition unless it is corroborated by other evidence.

C. A child detained shall not be fingerprinted, photographed, genetically tested for criminal identification purposes except by order of the Court. If ordered, the fingerprints or photographs, or genetic test shall be used only as specified by the Court. Any person who willfully violates the provisions of this section is subject to a civil fine of no more than five hundred dollars (\$500.00).

D. The Court shall make a preliminary finding on the issue of whether the child's best interests are represented by the parties; including parent(s), guardian(s), or custodian(s); the Division; the Prosecutor; and other necessary parties to the proceeding.

1. If the Court determines that the child's best interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the best interests of the child.

2. If the child's interests conflict with those of the parent(s), guardian(s) or custodian(s), the Court shall appoint a guardian ad litem to represent the best interests of the child.

3. If the Court determines that the child has other legal interests that must be represented, it can appoint legal counsel for the child after appropriate findings.

4. In the above situations, a party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

E. A party, including the minor child or parent(s), guardian(s), or custodian(s), is entitled to the opportunity to introduce evidence and be heard, and to confront and cross examine witnesses testifying against the child, and to admit or deny the allegations in a petition.

F. Where appointment of counsel for the child is made, the Court shall appoint counsel from the members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless compensation is authorized by the Court.

#### **§1205. Temporary Protective Custody**

A. A child may be temporarily taken into protective custody:

1. By a Law Enforcement officer or the Division when they have reasonable grounds to believe that the child has run away from his/her parent(s), guardian(s) or custodian(s); or

2. By Law Enforcement officer or the Division if there exists reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary; or

3. By Law Enforcement officer or the Division if there exists reasonable grounds to believe the child is a danger to him/herself and/or to others; or

4. Pursuant to an order of the Court issued due to a parent(s), guardian(s) or custodian(s) failure when requested to bring the child before the Court after having promised to do so at the time the child was released from detainment. In addition, the parent(s), guardian(s) or custodian(s) can be cited for contempt of court for failing to comply with the order of the Court.

B. Protective Custody of a child without a Court order shall not exceed seventy-two (72) hours, excluding Saturdays, Sundays and Court holidays.

#### **§1206. Release or delivery from Protective Custody**

A. A person taking a child into protective custody temporarily shall, with all reasonable speed:

1. Release the child to the child's parent(s), guardian(s) or custodian(s) and issue verbal counsel or warning as may be appropriate; or

2. Release to the child's parent(s), guardian(s) or custodian(s) upon a written promise to bring the child before the Court when requested by the Court; or

3. Deliver to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis. Upon receiving proper clearance from the medical facility the child shall be released pursuant to (1) or (2) above.

B. A child taken into protective custody shall not be placed in a jail or other facility intended or used for the incarceration of adults or for the detention of delinquent children, but shall be taken into protective custody in the following shelter care facilities:

1. A licensed foster home, or a home otherwise authorized by the Division, including relative placement; or

2. A facility operated by a licensed child welfare services agency and a contracted provider of the Navajo Nation; or

3. Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Court and certified by the appropriate authority.

C. When a child is delivered to an appropriate shelter care facility, the Division shall review the need for continued protective custody within twenty-four (24) hours after delivery of the child to the facility and shall release the child from protective custody unless it is appropriate under the criteria established by this Chapter or has been ordered by the Court.

D. If a child is taken into protective custody and is not released to the child's parent(s), guardian(s) or custodian(s), the person taking the child into protective custody shall give written notice (i.e. temporary custody notice), within seventy-two (72) hours of taking the child into protective custody, to the child's parent(s), guardian(s) or custodian(s) and to the Court together with a statement providing the reason for taking the child into protective custody.

E. In all cases when a child is taken into protective custody, the child shall be released to his/her parent(s), guardian(s) or custodian(s) in accordance with any written conditions of release and with the time limits set forth in this section.

### **§1207. Protective Custody Hearing; Court Determination**

A. Where a child has been taken into protective custody:

1. A petition shall be filed by the Prosecutor within forty-eight (48) hours excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released pursuant to §1206, herein.

2. A protective custody hearing shall be held within twenty-four (24) hours of the filing of the petition, excluding Saturdays, Sundays and Court holidays to determine whether continued protective custody is required pursuant to section (F) herein.

B. Written notice of the hearing shall be served to the child's parent(s), guardian(s) or custodian(s), and to the child pursuant to §1010, herein. Parties, counsel and child may appear electronically for this hearing.

C. The Court may appoint a hearing officer for the purpose of holding protective custody hearings under the supervision of a judge.

D. At the commencement of the hearing, the Court shall advise the parties, including the minor child, of their basic rights pursuant to §1204 herein, and shall appoint counsel and/or a guardian ad litem, if appropriate.

E. At the hearing all relevant and material evidence helpful in determining the need for protective custody may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

F. If the Court finds, based on probable cause, that the child's protective custody is necessary pursuant to one of the criteria below, the Court shall issue an order of protective custody to an appropriate facility.

1. The child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. The child's parent(s), guardian(s), custodian(s) or other person cannot provide adequate supervision and care for the child; or

3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

G. The judge shall order the release of the child with one or more of the following conditions:

1. The child is placed in the custody of a parent(s), guardian(s), custodian(s), relative, or under the supervision of an agency agreeing to supervise the child.

2. The child's travel, association with other persons or place of residence during the time of release is restricted.

3. Any other condition deemed necessary and consistent with this Chapter.

### **§1208. Preliminary Hearing**

A. Purpose of the Preliminary Hearing is to determine probable cause that the child is in need of supervision and will proceed as follows:

1. Advise the child and parties of their basic rights, pursuant to §1204, herein.

2. Appoint a guardian ad litem or counsel, if appropriate.

3. Inform parties as to the contents of the petition and the possible disposition.

4. The child will admit or deny the allegations stated in the petition.

B. At the conclusion of the preliminary hearing, the Court shall set the matter for:

1. An adjudicatory hearing if a denial is entered; or

2. A dispositional hearing if an admission is entered, or when allegations in the petition are minor the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

### **§1209. Continuance under supervision without judgment – Consent decree – Disposition**

A. At any time after the filing of a child in need of supervision petition, and before the entry of a judgment, the Court may, on motion of the Prosecutor or counsel for the child or the child, suspend the proceedings and continue the child under supervision in his/her own home under terms and conditions negotiated by the parties including use of available diversion programs and supervised by probation services. The Court order continuing the child under supervision pursuant to this section shall be known as a "consent decree" and shall be voluntary by all the parties.



B. A consent decree shall remain in force for a period not to exceed six (6) months unless a motion for a hearing is filed by either the Prosecutor or the child's counsel or the child to extend, or revoke the consent decree, or terminate court supervision.

C. Upon completion of the provisions of the consent decree or expiration, a party shall motion to dismiss the original petition with prejudice.

#### **§1210. Adjudicatory Hearings; Findings; Dismissal**

A. Hearing on petitions shall be conducted by the Court separate from other proceedings and without a jury. The proceedings shall be recorded. The Court shall advise the parties of their basic rights pursuant to §1204, herein.

B. All hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the Court may be present at a closed hearing, and on the condition that they respect the confidentiality of the proceedings.

C. Those persons or parties who intentionally divulge information in violation of section (B) of this section shall be guilty of an offense. Persons found guilty of violating the provisions of this section shall be subject to pay a civil fine not to exceed five hundred dollars (\$500.00).

D. The Court after hearing all of the evidence shall make and record its findings on whether or not the child is in need of supervision by clear and convincing evidence, in the absence of such findings the Court shall dismiss the petition without prejudice and shall order release of the child.

E. The Court shall schedule a dispositional hearing and order predisposition study and report if that document has not been prepared and received. Such hearing shall be scheduled within thirty (30) days. The Court shall make an appropriate order for protective custody, if necessary.

#### **§1211. Predisposition Studies; Reports and Examination**

A. If the Court finds that the child is in need of supervision the Court shall order Probation Services, or if necessary the Division, prepare a predisposition report, which shall include evaluations, assessments, dispositional reports, a family assessment, and other material to be considered by the Court. The report shall be submitted no later than five (5) days before the scheduled hearing. If the report will not be submitted before the deadline then an affidavit providing reasons why a report will not be completed shall be filed with the Court no later than five (5) days before the scheduled hearing date.

B. The predisposition study shall contain the following information:

1. A statement of the specific harm to the child that intervention is designed to alleviate;

2. If continued protective custody is recommended, a statement of the likely harm the child will suffer as a result of protective custody, including emotional harm resulting from separation from his/her parent(s), guardian(s) or custodian(s);

3. A case plan consisting of:

a. A description of the specific progress needed to be made by the parent(s), guardian(s) or custodian(s) and the child in order to prevent further harm to the child; a specific plan setting out the steps to be taken by the parent(s), guardian(s), custodian(s), and social worker; and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the assigned agencies overall plan for insuring that the services will be delivered;

b. A description of the family environment;

c. A description of the behavior that will be expected before a determination is made to end Court supervision.

C. The Court may order that an adjudicated child be transferred to an appropriate facility for a period of not more than thirty (30) days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

## **§1212. Disposition**

A. In the dispositional hearing, the Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value.

B. The Court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for a dependent child; or

2. Transfer legal custody to an agency responsible for the care of children in need of supervision; or

3. Place the child under Court supervision.

C. Unless a child found to be in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children or an adult criminal facility.

D. Whenever the Court vests custody in an agency or institution it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

E. Whenever the Court orders the child to be taking into protective custody and it is necessary to remove the child from that initial placement, Probation Services or the Division, prior to removing the child, shall contact the Prosecutor in writing to file a notice of change of placement to the Court, or to request a hearing if the situation warrants. In cases of emergency, a

child can be removed prior to making contact with the Prosecutor. However, Probation Services or the Division shall contact the Prosecutor to file notice of change of placement or request a hearing as soon as possible after the removal.

### **§1213. Contempt**

A. A child allegedly violating a valid order of the Court shall be subject to an order to show cause hearing, where the court will make a determination of whether the allegation(s) are true. If the Court finds that the allegation(s) are true the Court shall examine all possible options to address the child's compliance with the Court order, including other alternatives and resources available, which shall not include detention.

B. If the child continues to violate the orders of the Court and all possible options to address the issues of noncompliance have been considered, the Prosecutor may consider a delinquency proceeding and it shall proceed in accordance with the Delinquency provisions herein.

## **SUBCHAPTER 4. DELINQUENCY PROCEEDINGS**

### **§1301. Commencement of Proceedings by Petition**

A. Proceedings under this subchapter shall be initiated by the filing of a petition signed by the Prosecutor.

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a Law Enforcement official upon information and belief, may cause a petition to be initiated by the Prosecutor.

### **§1302. Preliminary Inquiry and Referral**

A. Allegations that a child is a delinquent child shall be referred to the Prosecutor, who shall conduct a preliminary inquiry.

1. If it is determined that a petition shall be filed, the Navajo Nation shall file such petition within thirty (30) days from receipt of the arrest report. The Prosecutor's receipt of the police report should reflect the same date as the Department of Law Enforcement record log.

2. If a petition is not filed, the Prosecutor shall refer the matter within ten (10) days from the day of declination to another appropriate agency.

3. If a child is detained and further detainment is sought, the petition shall be filed with the Court within twenty-four (24) hours from receipt of the arrest report.

B. Upon request of the Prosecutor, the probation officer shall conduct screening on all alleged delinquent offenders who are detained. The probation officer will initiate parental contact and recommend an alternative plan to further detainment; unless further detainment is necessary pursuant to §1311(F).

### C. Referral by Law Enforcement

1. Law Enforcement officers taking a child into custody and not released on allegations that the child committed a delinquent act shall refer the arrest report to the Prosecutor within forty-eight (48) hours excluding Saturdays, Sundays and Court holidays.

2. If the child is not detained or is released after initial detainment, the Law Enforcement officer shall refer the police report to the Prosecutor within seventy-two (72) hours excluding Saturdays, Sundays and Court holidays.

D. During the preliminary inquiry of the law enforcement referral, the Prosecutor shall coordinate with the probation officer in cases where the child is detained.

### **§1303. Petition Filing and Dismissal**

A. A petition shall be filed by the Prosecutor with the Court within forty-eight (48) hours of receiving the arrest report from Law Enforcement, excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released.

B. Once the Court determines a petition alleging delinquent act(s) was filed beyond the thirty (30) day preliminary inquiry, the petition shall be dismissed with prejudice unless upon a proper showing of due diligence of timely filing by the Prosecutor, then the Court may authorize the petition to be re-filed within twenty (20) days from the date of dismissal.

### **§1304. Petition – Form and Content**

A petition initiating any proceeding under this subchapter shall be captioned "In the Court of the Navajo Nation (judicial district)", and entitled, "In the Matter of \_\_\_\_\_ a child, tribal enrollment number: \_\_\_\_\_ DOB: \_\_\_\_\_ and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. A statement that the child has engaged in a delinquent act(s) and is in need of care or rehabilitation.

C. There shall be one petition filed for each alleged violation citing the appropriate section of the Criminal or Motor Vehicle Code.

D. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.

E. The name, birth date, physical and mailing address of the child.

F. The names and physical and mailing addresses of parent(s), guardian(s), custodian(s) and spouse, if any, of the child; and if none of the parent(s), guardian(s), custodian(s) or spouse, if any, reside or can be found within the Navajo Nation, or if their physical or mailing addresses

are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

G. The name of the Prosecutor presenting the petition and the date and time presented.

H. Whether the child is in custody, and if so, the place of detention and the time the child was taken into custody.

I. Assertion that Petition is filed within the thirty (30) days of preliminary inquiry or pursuant to §1303(B).

J. Name and address of any witness(es) on behalf of the Navajo Nation.

K. If any matters required to be set forth by this section are not known, a statement that they are not known should be made.

### **§1305. Preliminary Diversion**

In lieu of filing a petition, the Prosecutor, the probation officer, the child and the parent(s), guardian (s) or custodian(s) may participate in a diversion program; such program shall be monitored by the probation services.

A. The diversion agreement shall include the following:

1. The name, birth date, physical and mailing address of the child.
2. The name, physical and mailing addresses of parent(s), guardian(s), custodian(s) and/or spouse, if any, of the child.
3. The name of the alleged offense.
4. The basic rights of the minor child.
5. The role of the probation officer in monitoring the diversion agreement.
6. Resources identified and sought for the child shall address the underlying problem related to the alleged delinquent act(s). Such resources may include but are not limited to:
  - a. Peacemaking and cultural resources;
  - b. Appropriate counseling and/or prevention programs;
  - c. Law Enforcement Explorers Program (Career Intervention Program);
  - d. Traffic Survival School;
  - e. Defensive Driving School;
  - f. Youth development services;
  - g. First offender and teen court programs;
  - h. Rehabilitation and support programs.
7. Payment of restitution, nalyeeh, if appropriate.
8. Maintain school attendance, enroll in a GED program, or participate in vocational education, including any educational related services.
9. Community Service.

10. A provision for tolling the filing of the petition.

B. A child's participation in any diversion shall:

1. Be voluntary and binding.
2. Require the consent of the parent(s), guardian(s) or custodian(s).
3. Be dismissed upon successful completion with no petition being filed and shall not be used against the child in any further proceedings.

C. A child deemed to have committed a violent or serious act or is a chronic offender, shall not be eligible for the diversion program.

D. In the event of any violation of the diversion program, the probation officer shall refer the matter to the Prosecutor and a petition may be filed with the Court.

### **§1306. Preliminary Hearing**

A. A petition alleging that a child is an alleged offender shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten (10) days from the date the petition is filed when a child is in custody; or
2. Twenty (20) days from the date the petition is filed, when a child is not in custody or is released from custody.

B. The Hearing may be continued upon motion of the Prosecutor or upon the Court's own motion for any of the following:

1. By reason of the unavailability of material evidence and/or witness(es), a continuance will be granted only upon a showing of due diligence by the Prosecutor in his/her attempts to secure the evidence and/or attendance of witness(es). If a proper showing of diligence is not made, the petition must be dismissed with prejudice.
2. If service of process has not been accomplished, then the Prosecutor must show due diligence that service of process was attempted.
3. To allow legal representation to be secured for the child.

C. A continuance shall not exceed ten (10) days, if the child is in custody, or twenty (20) days if the child is not in custody.

D. At the conclusion of the preliminary hearing, the Court shall set the matter for:

1. An adjudicatory hearing if a denial is entered; or
2. A dispositional hearing if an admission is entered, or when allegations in the petition are minor the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

### **§1307. Consent Decree**

A. At any time after the filing of a petition, and before the entry of a judgment, the Court may, on motion of the Prosecutor, the child, and/or counsel for child suspend the proceedings and continue the child under supervision in his/her own home under terms and conditions negotiated by the parties and supervised by Probation Services. The Court order continuing the child under supervision pursuant to this section shall be known as a "consent decree". The consent decree shall also include a provision for tolling.

B. If the child does not agree to enter into a consent decree the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the Prosecutor after consultation with Probation Services, the Court shall consider the objections and the reasons therefore, and may in its discretion enter the consent decree.

C. A consent decree shall remain in force for a period not to exceed six (6) months unless the decree is discharged by Court pursuant to recommendation by the Probation Officer. Prior to the expiration of the six (6) month period, and upon the application of probation services or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his/her counsel and he/she shall have thirty (30) days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.

D. If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree, the Prosecutor shall file a motion to vacate or extend the consent decree. After a hearing and findings of whether or not the child is found to have violated the terms of the consent decree, the Court may:

1. Extend the period of the consent decree; or
2. Make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by Probation Services or who completes a period under supervision without reinstatement of the original delinquency judgment shall not be in jeopardy again in any Court for the same offenses or conduct. Nothing in this section precludes a civil suit against the child and his/her parent(s) for damages arising from his/her conduct.

F. A judge who elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegation(s) of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency petition if a consent decree is:

1. Denied and the allegation(s) in the petition remains to be decided in a hearing where the child denies his/her guilt; or
2. Granted but the petition is subsequently reinstated.

### **§1308. Basic Rights**

A. In all proceedings alleging the delinquency of a child under this Chapter, the child has a right to be represented by legal counsel. The Court shall appoint counsel from the Office of Navajo Public Defender or members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless otherwise authorized by the Court.

B. The Court shall advise the child before the Court of his/her basic legal rights under this Chapter at each separate appearance and advise the child of their continuing rights for the duration of the Court proceedings, including peacemaking.

C. A child alleged to be a delinquent child shall, from the time of being detained and/or taken into custody be advised of his/her right to remain silent. The child shall not be questioned except to determine identity and to determine the name of the child's parent(s), guardian(s) or custodian(s). While the child is in a detention facility, he/she shall not be questioned without the presence of a parent(s), guardian(s), custodian(s), and/or legal counsel.

D. In a proceeding on a petition, a child is entitled to the opportunity to introduce evidence and be heard, to confront and cross-examine witness(es) testifying against him/her, and to admit or deny the allegations in the petition.

E. In a proceeding on a petition:

1. An out of Court statement that would be inadmissible in a criminal matter shall not be admitted into evidence upon objection by the child.

2. Evidence seized or obtained illegally shall not be admitted into evidence to prove the allegations against a child upon objection by the child.

3. An admission or confession made by the child is insufficient to support a finding that the child committed the act(s) alleged in the petition unless it is corroborated by other evidence or stipulated admission.

F. A child shall not be fingerprinted, photographed, genetically tested for criminal identification purposes except by order of the Court. If ordered, the fingerprints or photographs, or genetic test shall be used only as specified by the Court. Any person who willfully violates the provisions of this section shall be subject to sanctions by the Court, including fines not to exceed five hundred dollars (\$500.00).

G. In all proceedings on a petition alleging delinquency in those instances specified under other provisions of this Chapter, the Court shall make a preliminary finding on the issue of whether the child's interests are not adequately represented by the parties and shall appoint a guardian ad litem to represent the interests of the child.

H. The Court, at any state of a proceeding shall appoint a guardian ad litem for a child if the child has no parent(s), guardian(s) or custodian(s) appearing on behalf of the child or if his/her interests conflicts with those of his/her parent(s), guardian(s) or custodian(s). A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.



I. The Court shall appoint a temporary guardian for a child if the Court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee or an agency that is vested with legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

J. Any offense similarly alleged in a petition for criminal proceedings or other actions in the adult Court are barred if the Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A civil proceeding or peacemaking may be subsequently initiated to address nalyeeh.

### **§1309. Taking Into Temporary Custody**

A. A child may be taken into temporary custody by Law Enforcement:

1. Pursuant to an order of the Court issued because a parent(s), guardian(s) or custodian(s) failed when requested to bring the child before the Court after having promised to do so at the time the child was released from custody.

2. When there are reasonable grounds to believe that the child has run away from his/her parent(s), guardian(s) or custodian(s).

3. If reasonable grounds exist to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.

4. Pursuant to the laws of arrest, without warrant, when probable cause exists to believe that the child committed a delinquent act(s). Law Enforcement shall immediately inform the child of his/her basic rights pursuant to §1308, herein.

B. In any of the situations above Law Enforcement shall be required to take the child to be medically cleared before incarcerating the child in a youth detention facility.

C. The Law Enforcement officer taking the child into custody shall notify the parent(s), guardian(s) or custodian(s) as soon as possible but no later than twenty-four (24) hours.

D. The above grounds shall govern the decision to determine whether or not further detainment is appropriate prior to Court intervention.

### **§1310. Release or Delivery from Temporary Custody**

A. A Law Enforcement officer taking a child into temporary custody shall, with all reasonable speed:

1. Release the child to parent(s), guardian(s) or custodian(s) and issue verbal counsel or warning as may be appropriate; or

2. Release the child to the parent(s), guardian(s) or custodian(s) upon a written agreement to bring the child before the Court when requested; or

3. Deliver the child to the probation office or to a detention facility.

B. If the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment and/or diagnosis, the child shall be transported to a medical facility.

C. If a child is taken into custody and is not released, Law Enforcement shall give written notice to the parent(s), guardian(s) or custodian(s) by delivering notice to the child's normal place of residence, no later than seventy-two (72) hours, and shall provide reason(s) for taking the child into custody.

D. An alleged delinquent child may be detained:

1. In a detention facility approved by the Court; or
2. Any suitable place designated by the Court that meets the standards for detention facilities under this Chapter.

E. A child alleged to be delinquent shall not be detained in a jail or other facility intended or used for the incarceration of adults.

F. A child under the age of eight (8) years of age shall not be committed to a detention facility but shall be delivered to the on-call probation officer who shall assess the child based on his/her observations for the following:

1. The child's home environment for the ability of a responsible adult person.
2. The current emotional stability of the child.
3. The physical condition(s) of the child.
4. The nature of the allegation(s).
5. The suitable place to alleviate placement in a detention facility.
6. Determine whether or not dependency action is appropriate.
7. Potential for violent behavior by the child.

### **§1311. Detention hearing required for detained child; Court Determination and Disposition**

A. Where a child who has been detained and is not released:

1. A hearing shall be held within twenty-four (24) hours, excluding Saturdays, Sundays and Court holidays from the filing of a petition to determine whether continued detention is required.

2. The judge may appoint a hearing officer, who is a member of the Navajo Nation Bar Association for the purpose of holding detention hearings.

B. Written notice of the hearing stating the time, place and purposes shall be given to the person designated by the Court and served to the child's parent(s), guardian(s), custodian(s) or spouse, if any, and the child who is alleged to have committed the delinquent act(s).

C. At the commencement of the hearing, Court shall advise the child of their basic legal rights pursuant to §1308, herein.

D. At the hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

E. If the Court finds the child's detention is appropriate the child shall not be released and shall remain in detention. Law Enforcement or the detention officer shall immediately return the child to a juvenile detention facility.

F. Detention shall be ordered based on the existence of probable cause, pursuant to the following criteria, the child:

1. Will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. Has no parent(s), guardian(s), custodian(s) or other person able to provide adequate supervision and care for the child; or

3. Will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

G. If the Court finds that detention of the child is not appropriate the Court shall order the immediate release of the child, but in so doing, may order one or more of the following conditions:

1. The child shall be returned to the parent(s), guardian(s), custodian(s) or relative, or under the supervision of an agency agreeing to supervise the child.

2. Place restrictions on the child's travel, association with other persons or place of residence during the time of release.

3. Impose any other conditions deemed reasonably necessary and consistent with this Chapter, including a condition requiring that the child return to custody if required.

H. An order releasing a child on any condition in this section may at any time be amended by Court order to impose additional or different condition(s) of release or to return the child to custody or detention for failure to conform to the conditions originally imposed. The release agreement to have the child returned to the Court when requested shall be signed by the child, parent, guardian or custodian.

### **§1312. Transfer to Adult Court; Hearing**

A. After a petition has been filed alleging a delinquent act, the Court may, before a hearing on the merits, transfer the matter for Prosecution to the adult Court after a transfer hearing, if:

1. The Prosecutor files a motion to transfer to the adult Court, upon the filing of the motion the child shall immediately be appointed legal counsel;

2. The child was sixteen (16) years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act(s) would be a crime if committed by an adult and consider the following:

- a. Threats the child may pose to other children in a juvenile detention facility;
- b. Whether or not the child is a danger to the public;
- c. The severity of the alleged delinquent act(s) and delinquent history or past conduct of the child;
- d. Compare the availability of treatment in the adult and juvenile systems;
- e. The child is not amenable to treatment designed to serve children.

3. Written notice of the time, place and purpose of the hearing is given to the child, parent(s), guardian(s) or custodian(s) at least three (3) business days before the hearing;

4. The Court at the hearing finds there are reasonable grounds to believe that:

- a. A delinquent act(s) has been committed and the child may have committed the alleged delinquent act(s); and
- b. The child is not amenable to treatment or rehabilitation as a child through available resources; and
- c. The child has a history of delinquent offenses or history or probation violations or a record of felony offenses; and
- d. The child is not committable to an institution for the mentally disabled or mentally ill; and
- e. The child is a danger to the public or him/herself and transfer to the adult Court would be in the child's best interest.

B. A hearing on whether the transfer should be made is held in conformity with the rules of evidence and the burden of proof is clear and convincing. The hearing will be to the Court without a jury.

C. A written transfer order containing specific findings and reasons for the order terminates the proceedings under this subchapter over the child with respect to the delinquent act(s) alleged in the petition.

D. Prior to the hearing, the probation officer shall prepare for the Court and make available copies to the child, child's counsel or parent(s), guardian(s) or custodian(s), a pre-dispositional report relevant to the issues described in section (A)(6)(a) through (e) of this section and the Court shall hear evidence and make specific findings in regards thereto. Gathering of such information for the pre-dispositional report shall not include any interviews with the child regarding the merits of the alleged offense.

E. If transfer is ordered and continued detention is required pending the proceedings in the adult Court, the child shall be detained in a juvenile facility.

F. No child found guilty of any Motor Vehicle Code violation may be incarcerated in an adult facility.

### **§1313. Adjudicatory Hearings; Findings; Dismissal**

A. Hearing on petitions shall be conducted by the Court separate from other proceedings without a jury. The proceedings shall be recorded.

B. All hearings shall be open to the general public except after a finding of exceptional circumstances the Court in its discretion deems it appropriate to conduct a closed delinquency hearing. Any person who intentionally or recklessly divulges information obtained from a closed hearing may be subject to civil fine, not to exceed five hundred dollars (\$500.00).

C. The Court shall determine if the allegation(s) of the petition are admitted or denied. If the allegation(s) are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegation(s) of delinquency shall make and record its findings on whether or not the act(s) subscribed to the child were committed by the child. If the Court finds that the allegation(s) on the petition have not been established, it shall dismiss the petition with prejudice and order the child released from any detention.

D. If the Court finds, on the basis of a valid admission(s) or on the basis of proof beyond a reasonable doubt that the child committed the act(s), the Court shall make a written record of its findings.

E. Findings of a child in need of care and rehabilitation will be as follows:

1. With the concurrence of the parties, the Court may proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation; unless the act constitutes a felony which creates a rebuttable presumption that the child is in need of care or rehabilitation. The Court shall make written findings.

2. If no concurrence or felony rebuttal, then a hearing will be scheduled to hear evidence of need of care and rehabilitation prior to any disposition.

### **§1314. Predisposition studies; reports and examination**

A. The Court shall order probation services to prepare a predisposition study including evaluations, assessments, and dispositional reports, which shall be submitted to all parties five (5) days prior to the hearing. Such report shall include information of the child, his/her family, home environment and academic needs. A party failing to timely file such documents, in absence of just cause, may be sanctioned at the Court's discretion.

B. Where there is an indication that the child may be mentally ill or mentally disabled, the Court or any party may motion for an order that the child be examined by a psychiatrist or psychologist prior to a hearing as part of the predisposition study and report.

C. The Court may order that an adjudicated delinquent child be transferred to an appropriate facility for no more than thirty (30) days for purposes of diagnosis; and such written report shall be filed with the Court with recommended disposition.

D. In the dispositional hearing, the Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.

E. By motion of a party or the Court, the hearing may be continued for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The Court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuance under this section, the Court shall make an appropriate order for detention or legal custody.

### **§1315. Disposition**

A. The Court may impose a fine and/or sentence not to exceed the fine and/or sentence which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child:

1. Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;
2. Place the child on probation under such conditions and limitations as the Court may prescribe.

B. A child shall not be committed or transferred to an adult detention facility.

C. Whenever the Court vests custody in an agency, institution or department it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

D. The Court may exercise jurisdiction over a child until they reach twenty-one (21) years of age if the Court deems it is in the child's best interest.

### **§1316. Damages to or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution**

A. Any person may recover damages, not to exceed ten thousand dollars (\$10,000.00), in a civil action, from the parent(s), guardian(s) or custodian(s) of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action and that the parent(s), guardian(s) or custodian(s) failed to provide adequate supervision of the child.

B. Recovery of damages under this section is limited to actual damages proved in the action, taxable Court costs, and, in the discretion of the Court, reasonable attorney's fees to be fixed by the Court.

C. Nothing contained in this section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by a child.

### **§1317. Motor Vehicle Code Violations**

A. The following Motor Vehicle Code violations are deemed a delinquent act:

1. Driving while under the influence of intoxicating liquor or drugs;
2. Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;
3. Reckless driving;
4. Homicide by vehicle.

B. All traffic violations including civil infractions involving children other than those listed in section (A) of this section shall be heard under this Chapter pursuant to the children in need of supervision subchapter.

C. Any Motor Vehicle Code violation by a child, including those specified in section (A) of this section, shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of this Chapter.

D. No court may incarcerate a child in an adult facility that has been found guilty of any of the above Motor Vehicle Code violations.

### **§1318. Probation Revocation; Disposition**

A. A child on probation who violates a term of the probation may be proceeded against in a probation revocation proceeding.

B. Revocation of probation shall be an original proceeding styled as a "Petition to Revoke Probation" with reference to the initial proceeding. The petition shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

C. The standard of proof in these proceedings shall be evidence beyond a reasonable doubt.

D. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition.

E. If a finding of probation violation is made, the Court may extend the period of probation, not to exceed ninety (90) days, or make any other judgment or disposition consistent with that of the original disposition of the case.

**§1319. Limitations on dispositional judgments; modification, termination or extension of court orders**

A. No child shall be ordered for more than one (1) year to an institution for the housing of delinquent children without further order of the Court. A judgment transferring custody of a delinquent child to an agency responsible for the custody and rehabilitation of delinquent children is subject to monitoring by Probation and Parole Services independent of the Court supervision and:

1. The agency to which legal custody is transferred may recommend parole or release of the child;

2. The supervision of a child after release under (A)(1) of this section may be conducted by the agency in conjunction with the Probation and Parole Services;

3. A child or his parent(s), guardian(s) or custodian(s) may motion the Court for parole or release.

B. A judgment of probation shall remain in force for a period not to exceed one (1) year from the date entered unless terminated or extended by order of the Court.

C. A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the one (1) year period.

D. Prior to the expiration of a judgment of probation, the Court may extend the judgment for an additional period of one (1) year if it finds at a hearing beyond reasonable doubt that the extension is necessary to protect the community or to safeguard the welfare of the child.

E. When a child reaches twenty-one (21) years of age all judgments affecting the child then in force automatically terminate.

**§1320. Judgment; non-criminal nature; non-admissibility**

The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under this Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Navajo Nation program or obtaining Navajo Nation employment. The disposition of a child and any evidence given in a hearing in Court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching the age of majority.

**SUBCHAPTER 5. TERMINATION OF PARENT-CHILD RELATIONSHIP**

**§1401. Philosophy**



Termination of parental rights is not the custom or tradition of the Navajo people. At times it is necessary to sever that parent-child relationship when it is in the child's and families' best interest. Therefore, severance of the parent-child relationship can be sought as a last resort and after all other options, including customary adoptions, are considered by the party requesting the termination of the parent/child relationship.

#### **§1402. Involuntary**

A. Any person or agency that has a legitimate interest in the welfare of a child, including the Division may cause a petition to be filed for the termination of the parent-child relationship alleging one of the following grounds, that the parent:

1. Has abandoned the child for more than six (6) months, or
2. When there is a judicial determination that the child is an abandoned infant, or
3. Has seriously neglected or willfully abused the child, or
4. Is unable to discharge parental responsibilities because of a determination of a mental condition or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period, or
5. Is deprived of his/her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.

B. When the Division recommends the filing of a termination of parental rights, the petition shall be filed by the Office of the Prosecutor.

C. Evidence sufficient to justify the termination of the parent-child relationship shall be by clear and convincing proof.

D. The Court shall appoint legal counsel for the parent(s) and if necessary, may appoint a guardian ad litem for the child.

#### **§1403. Voluntary Relinquishment**

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to a parent(s), a relative, foster parent, or a privately licensed child welfare agency, may cause a petition to be filed for the voluntary termination of the parent-child relationship alleging grounds that the parent(s) have voluntarily relinquished their rights to a child or have consented to adoption.

B. When the Division recommends the filing of a termination of parental rights, the petition shall be filed by the Office of the Prosecutor.

C. Any petition for termination of parental rights filed pursuant to this Section shall include documentation of the parent's voluntary consent and/or consent to adoption, such consent shall be no less than ten (10) days after the child's birth.

#### **§1404. Petition**

A. A petition for the termination of the parent-child relationship filed pursuant to this subchapter shall include:

1. The name, address and physical residence of the petitioner;
2. The name, sex, date and place of birth, census number, if any, and residence including current placement of the child;
3. Maternal and paternal clans of the child, if known;
4. The basis for the Court's jurisdiction;
5. The relationship of the petitioner to the child or the fact that no relationship exists;
6. The names, addresses, physical residence, domicile and dates of birth, clans and census numbers of the legal parents, if known;
7. The names and addresses of the persons having legal custody or guardianship of the child or acting in loco parentis to the child, or child welfare agency having legal custody or providing care for the child;
8. The grounds on which termination of the parent-child relationship is sought; and
9. Names and addresses of potential guardian/adoptive parent if different from above.
10. Documentation that all permanency options were exhausted prior to filing the petition.
11. In a voluntary termination proceeding, a copy of the parental consent to relinquish shall include documentation and verification of waiver of service of process, notice and/or appearance.

B. The Office of the Prosecutor will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

1. Whose child has been in foster care for fifteen (15) of the most recent twenty-two (22) months. The petition must be filed by the end of the child's fifteenth (15<sup>th</sup>) month in foster care.
2. Whose child has been determined by a court of competent jurisdiction to be an abandoned infant. The petition to terminate parental rights is made within sixty (60) days of the judicial determination that the child is an abandoned infant; or
3. Within sixty (60) days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

C. The Navajo Nation may elect not to file or join a petition to terminate the parental rights of a parent if:

1. The child is being cared for by a relative pursuant to a Court order;

2. The Division has documented in the case plan and presented to the Court a compelling reason for determining that filing such a petition would not be in the best interests of the individual child; or

3. The Division has not provided to the family, consistent with the time period in the case plan, services that the Division deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

D. When the Navajo Nation files or joins a petition to terminate parental rights, it concurrently begins to identify, recruit, process and approve a qualified adoptive family for the child.

#### **§1405. Service; Notice; Waiver**

##### A. Service

1. Service of process of the petition shall conform to the Navajo Rules of Civil Procedure.

2. Upon verification of service, a hearing shall be scheduled pursuant to the Navajo Rules of Civil Procedure.

##### B. Notice

1. Notice of the final hearing on the petition shall be sent to the child's parent(s), the Division, the agency, the legal custodian(s), and the caretaker of the child.

2. The hearing notice sent by certified mail to the parents shall be sufficient verification that the notice is deemed complete. Upon a proper showing by the petitioner that reasonable efforts were made to notify the parents of the final hearing, the final hearing may proceed and if failing to do so shall not be continued more than once.

##### C. Waiver

1. Waiver means that the parent(s) will not be a party to the proceedings, which would have entitled them to receive a copy of the petition, an opportunity to respond, receive hearing notices, and participate in the proceedings. A parent(s) shall have the right to withdraw the waiver in writing or in open court at any time prior to or at the final hearing.

2. A parent may waive service of process in a voluntary proceeding in writing notarized or attested to by two credible witnesses eighteen (18) years of age or older.

3. A parent properly served may waive notice and appearance in open court; or in writing, notarized or attested to by two credible witnesses who are eighteen (18) years of age or older.

#### **§1406. Investigative report prior to disposition; Contents**

A. An investigative report shall be completed by the Division, an agency or other person selected by the Court and submitted to the Court prior to a final hearing, unless it was previously submitted.

B. This report shall include:

1. The circumstances of the petition, the social history, the present condition of the child and parent(s), permanency plan for the child, and such other facts as may be pertinent to the parent-child relationship;

2. Include reasons and recommendations whether or not to terminate the parent-child relationship;

3. A summary of whether the conditions necessary for termination of parental rights under this Subchapter have been met, including but not limited to an evaluation of whether the services necessary to reunite the child with the parent(s), guardian(s) or custodian(s) and alleviate the necessity for termination of parental rights have been offered, accepted, and if accepted, whether such services were completed or successful.

C. The Court may order any additional studies it deems necessary.

D. The Court may waive the requirement of the investigative report when the Court finds that it is in the best interest of the child, and/or when a valid consent has been received from the parent(s).

**§1407. Hearing**

A. All hearings shall be closed. Only persons found to have a direct interest in the case or in the work of the Court shall be admitted. The contents of the hearing shall not be disclosed. The Court may require the presence of any party and witness it deems necessary to the disposition of the petition, except for a parent(s) who has executed a valid waiver.

B. Motion Hearing for Temporary Custody

1. Motion for temporary custody shall be filed with the petition and served pursuant to the Navajo Rules of Civil Procedure including any valid consent for temporary placement.

2. The motion shall state the child's current home environment, the qualifications of the temporary custodian(s), and the reasons why such placement is deemed necessary.

3. A custody hearing shall be scheduled not less than fifteen (15) days from the date of the filing of the petition, unless the hearing has been waived.

4. The Court may waive a hearing on the motion and issue a temporary custody order when a valid consent for temporary placement has been filed with the motion.

C. Petition Hearing

1. The Court shall conduct a final hearing on the petition upon completion of service of process, but not to exceed a period of six (6) months from the date of filing.

2. If no service of process or hearing is held within the above time period the petitioner or the court on its own shall request a status conference for reasons why the petition should not be dismissed.

## **§1408. Court Order; Form; Contents**

### **A. Temporary Custody Order**

1. The Court shall issue specific findings for the granting of the motion pending a final hearing on the petition.

2. The order shall vest temporary custody of the child with an appropriate agency or custodian as identified in the motion or as determined at a hearing.

### **B. Termination of Parental Rights Decree**

1. The Court shall issue specific findings terminating the parent-child relationship and take one of the following courses of action:

a. Transfer legal custody to a potential adoptive parent(s) pending the issuance of an adoption decree, or

b. Transfer legal custody to an individual or an authorized agency that shall identify an adoptive parent(s) pending the issuance of an adoption decree, and

c. If no adoption decree has been issued within six (6) months, the Court shall conduct a review hearing and thereafter every six (6) months until an adoption decree is issued.

2. Such order shall be conclusive and binding on all persons from the date of entry.

3. The Court shall fix responsibility for the child's financial support pending the issuance of an adoption decree.

C. Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, unless the Court finds that in the best interests of the child it is necessary to issue an order for the petitioner to file the appropriate pleadings to address other permanency options for the child.

## **§1409. Effect of Court Order**

A. An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent(s). This right of support shall be terminated by a final adoption decree.

B. The parent-child relationship may be terminated with respect to one parent(s) without affecting the relationship of the other parent(s).

C. The order shall not divest the clans of the biological parent(s) to the child.

## **SUBCHAPTER 6. INDIAN CHILD WELFARE ACT PROVISIONS**

## **§1501. Application of the Indian Child Welfare Act in Court**

The Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §1901 et seq., where they do not conflict with the provisions of this subchapter. The procedures for state Courts in the Indian Child Welfare Act shall not apply in the Court unless specifically provided for in this subchapter.

### **§1502. Comity; Conflict of Laws**

A. State child custody orders involving Navajo children may be recognized by the Court only after a full independent review of such state Court proceeding has determined:

1. The state Court had jurisdiction over the Navajo child;
2. The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., were properly followed;
3. Due process was provided to all interested persons participating in the state Court proceeding; and
4. The state court proceeding did not violate the public policies, customs, or common law of the Navajo Nation.

B. Tribal child custody orders involving Navajo children shall be recognized by the Court after the Court has determined:

1. That the tribal Court exercised proper subject matter and personal jurisdiction over the Navajo parties; and
2. Due process was accorded to all interested parties participating in the tribal Court proceeding.

C. Due to the vital interest of the Navajo Nation in its children and those children who may become members of the Navajo Nation, the statutes, regulations, public policies, customs and common law of the Navajo Nation shall control in any proceeding involving a Navajo child.

### **§1503. Voluntary Placement**

A. A voluntary placement or custody, temporary or permanent, of a Navajo child subject to a foreign jurisdiction may be judicially determined by the Navajo Courts where the parent consents to such placement.

B. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be filed by the Navajo Department of Justice and approved by the Court. Such petitions shall conform to the above §1404.

C. The Court may require that the priority preference placement provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913, be followed where the child is to be placed outside of Navajo Indian Country, unless the best interests of the child require otherwise.

### **§1504. Court Wardship**

Any Navajo child who is domiciled or resides within Navajo Indian Country and is voluntarily placed outside of Navajo Indian Country shall be made a ward of the Navajo Court. A copy of any consent executed by the parents of such Navajo child and the location of the placement shall be filed; including an annual report on the location of the child. Wardship attaches to the child when he/she physically leaves Navajo Indian Country. Any placement of a Navajo child in violation of this Section may be invalidated upon petition to the Court and the Court shall make such orders at that time as will protect the Court's wardship over the child's best interests.